

<sup>1</sup> Application for Hearing filed on March 5, 2003, with the Kansas Division of Workers Compensation.

assistant personnel director testified that she began working for respondent in June 1995. There is also a statement in the record that indicates claimant may have worked for respondent on two separate occasions. Claimant testified her upper extremity symptoms began in 1997, but respondent represented on cross-examination that claimant (or, perhaps, another worker with a similar name) first reported upper extremity symptoms as early as 1992 or 1993. With these various inconsistencies in mind, the Board will attempt to piece the facts together.

If claimant, who worked with knives cutting meat, first reported pain in her hands and shoulders as early as 1992 or 1993, it appears claimant's upper extremity symptoms initially resolved. The record is not clear but it appears claimant alleges that in approximately 1997 she again experienced an increase in her upper extremity symptoms and that she believes she reported those symptoms to respondent's nurses who then provided her ibuprofen every day through her last day of working for respondent on October 7, 2002.

Nevertheless, the record is clear that in early January 2002, claimant underwent breast surgery to remove a lump. However, upon returning to work following surgery on January 10, 2002, claimant experienced chest pain at the site of the incision. Because of that medical problem, claimant was on leave of absence from approximately February 25 to May 23, 2002.

Claimant requested a transfer from the fabrication department, which is kept chilled, to the warmer kill floor. According to claimant, her upper extremity symptoms had remained fairly constant until she transferred to the kill floor, where she worked from July 15, 2002, through October 7, 2002. Claimant found the new job cutting stomachs on the kill floor was physically harder than her former job in the fabrication department. And claimant believes her upper extremity symptoms worsened due to that harder work.

Claimant requested to transfer back to the less demanding fabrication department, but respondent declined. When claimant obtained a recommendation from the doctor who had treated her for the lump in her breast for less strenuous work, respondent placed her on a leave of absence. As a result, claimant's last day of work for respondent was October 7, 2002.

Claimant testified that while on the kill floor she told her supervisor two or three times about her upper extremity symptoms, and that on at least one occasion her supervisor sent her to respondent's nurses' station where she saw a nurse who recommended ice, gave claimant some pills and sent her home. Claimant also testified that at some unspecified point in time she began complaining to respondent's nurses of her upper extremity pain every workday both before and after work.

On the other hand, claimant's kill floor supervisor, Gessler Sobalvarro, testified that he did not recall claimant complaining of upper extremity symptoms or injuries during the period claimant worked for him through October 7, 2002. Another of claimant's kill floor supervisors, Diego Aleman, testified that claimant did not complain to him of having upper extremity injuries or symptoms. Moreover, Selena Sena, respondent's workers compensation coordinator, testified that claimant was never sent home early any time between July 15 through October 7, 2002.

Respondent also presented numerous other witnesses who were either supervisors, worked in the nursing department or worked in the personnel department who testified that claimant never advised them of work-related upper extremity symptoms or injuries. The Board concludes respondent did not have knowledge that claimant was experiencing upper extremity symptoms before she initiated this claim.

The record indicates that claimant experienced symptoms in both her upper extremities and in her chest. The symptoms in claimant's chest are related to the January 2002 breast biopsy, which is not a work-related problem. Although certain activity may create symptoms at the incision site, the evidence fails to establish that claimant's work activities have aggravated, accelerated or intensified the condition. Accordingly, claimant has failed to prove that her chest symptoms constitute a work-related injury. Therefore, claimant's request for benefits for those symptoms is denied.

Moreover, claimant has failed to prove that she provided respondent with timely notice of the alleged accident or injury to her bilateral upper extremities as required by K.S.A. 44-520. Claimant's testimony that she notified her supervisor and at least one of respondent's nurses of her bilateral upper extremity complaints is not persuasive. Accordingly, claimant is not entitled to receive workers compensation benefits for the alleged upper extremity injuries.

**WHEREFORE**, the Board affirms the September 22, 2003 Order Denying Compensation entered by Judge Fuller.

**IT IS SO ORDERED.**

Dated this \_\_\_\_ day of November 2003.

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BOARD MEMBER

c: Conn Felix Sanchez, Attorney for Claimant  
Terry J. Malone, Attorney for Respondent and Liberty Mutual Insurance  
Shirla R. McQueen, Attorney for Respondent and Fidelity & Guaranty Insurance  
Pamela J. Fuller, Administrative Law Judge  
Paula S. Greathouse, Workers Compensation Director